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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.18 of 2004

Commissioner of Income Tax-VII
Chennai. .. Appellant

versus

Smt.A.E.Sarojini
Chennai. .. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 23.5.2003 in ITA No.2312/Mds/94 for the Assesment year 1992-93 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench, against the order of the Commissioner of Income Tax (Appeals)-III Madras in ITA.No.27/93-94 dated 4.8.94 for the assessment year 1992-93, against the order of the Income Tax officer Ward I (1) Tambaram dated 8/12/93 and made in G.I.1707-S.

For appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

For respondent : Mr.R.Kumar
representing M/s.T.N.Seetharaman

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This following are the questions of law raised in this case

(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in dismissing the appeal without going to the merits of the case?

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(ii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee is entitled for the capital gains exemption under Section 54 F?

The appeal relates to the assessment year 1992-93.

2. The assessee herein is an individual. The assessment was originally completed under Section 143(1)(a). While making a prima facie adjustment in computing the claim on capital gains, the Income Tax authority rejected the claim on exemption under Section 54F of the IT Act on the ground that the assessee had a residential house at the time of sale of the vacant side and that the sale proceeds were utilised for the extension of the existing building. The assessee preferred an application under Section 154 of the Income Tax Act, 1961, contending that the benefit of Section 54 F should have been considered and the question which is an arguable issue, ought not to have been a matter for consideration under Section 143(1)(a). The assessing authority, however, rejected the petition under Section 154. An appeal was preferred against this order before the Commissioner of Income Tax (Appeals). The assessee contended that the disallowance of the claim under Section 54 F could not be made under the prima facie adjustment under Section 143(1)(a), since the question was a debatable one. Taking the view that a disputed or a debatable issue could not be the basis for prima facie adjustment under Section 143(1)(a), the appellate authority accepted the plea of the assessee and allowed the appeal. The appellate authority went into the question on the merits of the claim to hold that the denial of deduction under Section 54 F as a prima facie adjustment and the computation of capital gains on the sale of capital asset were contrary to the provisions of the statute.

3. On appeal by the Revenue, the Tribunal found that the question of benefit available under Section 54 F as regards the utilisation for the exetension of the existing property was a debatable issue and hence, the Assessing Officer was not justified in making such adjustments through a prima facie adjustment under Section 143(1)(a) proceedings. Thus, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals).

4. Aggrieved of this order of the Tribunal, the Revenue has preferred this appeal before this Court, contending that when the assessee had a residential house at the time of sale of a vacant site and that the proceeds were utilised for the extension of the existing property, the benefit claimed under Section 54 F was rightly disallowed in the proceedings under Section 143(1)(a). The Revenue further contended that the Tribunal erred in its view that such a disallowance, which is in accordance with law, could not be a prima facie adjustment under Section 143(1)(a). In the circumstances, the Revenue prayed for restoration of the order of assessment.

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5. We do not agree with the submission made by the learned Senior Standing Counsel appearing for the Revenue. It is an admitted proposition of law that the exercise of power under Section 143(1)(a) is limited not only to the obvious but also to what is deductible from the return without any doubt or debate. A debatable issue as such does not so far considered under Section 143(1)(a) proceedings. In the decision reported in 286 ITR 397 (CIT Vs. C.S.KOTHARI (MAD.), this Court considered the scope of the provisions under Section 143 (1)(a). referring to the Section, this Court held:

> " A perusal of the above, clearly indicates that in making the adjustment of total income of the assessee, the Assessing Officer is entitled to make the adjustment of the income or loss declared in the return. The adjustments permissible have been enumerated in the above clauses (i), (ii) and (iii) of the first proviso to Section 143(1)(a) of the Act. Clause (i) deals with correction of arithmetical errors. Clause (ii) relates to grant of relief to the assessee, which is found due, but not claimed in the return. Clause (iii) deals with disallowance of claims of brought forward loss, deduction, allowance or any other reliefs claimed in the return which are prima facie inadmissible. "

6. The reported decision relates to a case where the Assessing Authority, in the course of the proceedings under Section 143(1)(a) excluded the interest payable under Section 234(a), (b) and (c) from the total tax payable by the firm for determining the profit apportionable among the parties. Confirming the order of the Tribunal, this court held that if the Officer was of the opinion that the assessee claimed certain benefit to which he was not entitled to, instead of making adjustment under Section 143(1)(a), it is for the Assessing Officer to initiate appropriate proceedings to assess the income in accordance with law. Touching on the jurisdiction of the Officer under Section 143(1)(a), this Court held that "it is a summary act on the basis of undisputed material furnished by the assessee, without factually disputing its correctness." In the light of the abovesaid view that a debatable issue can never be a subject matter for consideration while passing an order under Section 143 (1)(a), we reject the Revenue's contention and dismiss the appeal. There will, however, be no order as to costs.

ksv/bg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Asst.Registrar,
Income Tax Office, Sastri Bhavan,
Rajaji Nagar, Chennai-34.

2. The Commissioner of Income Tax (Appeals-III)
Chennai - 34.

3. The Income Tax Officer,
Ward-I (1), Tambaram.

4. The Commissioner of Income Tax,
Range-VII, Madras.

+1 cc to M/s.Pushyasitaraman, SCGC, Sr.No.13800.

+1 cc to Mr.T.N.Seetharaman, Advocate Sr.No.13913.

GG(CO)
dcp/5.9

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